

ALJ/GEW/avs

Decision 02-03-022 March 6, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Mandalay-Santa Clara Right of Way to Ventura Power Storage, LLC.

Application 01-05-049
(Filed May 23, 2001)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to Ventura Power Storage, LLC a 7.5-acre site located on a portion of SCE's Mandalay-Santa Clara 220-kilovolt (kV) transmission and 66-kV subtransmission right of way in the City of San Buenaventura. Ventura Power Storage would operate a self-storage facility on the site, a use that SCE states will not interfere with its utility operations. The application is unopposed. The City of San Buenaventura on January 28, 2002, approved a Mitigated Negative Declaration for construction of the 123,540-square-foot self-storage structure. We grant the application.

2. Background

The 7.5-acre site is used by SCE for above-ground transmission, subtransmission and distribution lines.¹ SCE acquired the property in 1957. Total book value for the 7.5 acres is \$66,318.27. The site is currently not utilized for any secondary purpose. SCE proposes to lease the site to Ventura Power Storage for development and operation of a self-storage facility. SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The term of the lease to Ventura Power Storage is 65 years. The lessee would pay a base rent of \$40,660 in Year 1, \$81,320 in Year 2, \$119,840 in Year 3, \$160,500 in Year 4, \$170,130 in Years 5-9, and \$179,760 in Year 10 to the end of the lease term. Additionally, the base rent would be adjusted by appraisal every tenth year to reflect fair market value.

The agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. Ventura Power Storage would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 17-foot clearance from all overhead electrical conductors. SCE also would require the lessee to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. The lessee would provide and maintain access roads on the

¹ The site is bounded on the north by office buildings, on the east by commercial property, on the south by vacant land that is being zoned for commercial use, and on the west by recreational and industrial land uses.

property. The lessee would be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, Ventura Power Storage would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses examined for this site, SCE determined that a self-storage facility offered the highest level of potential revenues.

To evaluate the rental value for the site, SCE received proposals from various developers. After reviewing the proposals, SCE reviewed rent paid for comparable sites by comparable storage facilities in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that Ventura Power Storage was given the opportunity to develop the property because of the background and financial position of the company and of its principal members, Bert Dumars and John A. McDonald.

Dumars, president and chief executive officer of Preferred Investments, has more than 20 years of experience in commercial and industrial real estate development. He has been involved with commercial and industrial park developments, high-rise complexes, and entertainment theme park organization. He has participated in the development of 18 self-storage facilities, ranging in size from 38,000 to 98,000 square feet.

McDonald has more than 20 years of experience as a senior principal and consultant with major development organizations, including the Koll Company, Aetna Realty Advisors and the Irwindale Community Redevelopment Agency. He has managed commercial and industrial construction projects with finished costs ranging up to \$120 million.

6. Environmental Review

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) In the past, the Commission has treated applications like this one merely as requests by the utility to allow it to transfer a leasehold interest in utility property. The Commission does not approve the project itself and does not issue a permit for the project development. The Commission conditioned its approval of such proposed leases on lessee's compliance with all applicable environmental regulations. The Commission reasoned that local authorities are generally in a superior position to

evaluate local environmental impacts and develop appropriate mitigation strategies. (*See, e.g.*, Decision (D.) 99-02-036 and D.99-04-066.) Accordingly, the Commission deferred to the local authorities to approve the project as a whole, subject to CEQA requirements.

However, to ensure that no development will take place without CEQA review by the appropriate agency, the Commission on August 2, 2001, in D.01-08-022, announced a change in its procedures for future applications. Henceforth, we will require the utility to include with its application copies of the necessary documents issued by the local entity acting as the lead agency under CEQA to establish that the environmental review has been conducted and any mitigation measures required by CEQA have been imposed, or that the lead agency found that the project in question is exempt from CEQA. The Commission would then assume the role of a responsible agency for CEQA purposes.

In support of this application, the applicant has submitted a copy of the City of San Buenaventura Negative Declaration recommending approval of a Mitigated Negative Declaration based on information contained in the Initial Study and the comments received during the Environmental Impact Report Committee's public review period.

The Initial Study found two potential impacts related to waste water and storm water quality. In the event that the project results in capacity or downstream wastewater deficiencies, the applicant would be responsible to improve local wastewater facilities according to the City of San Buenaventura standards so that wastewater flows from the project adequately. Development of the project site may also result in an increase in storm water runoff and in the amount of pollutants entering surface water flows. Because the proposed project

is subject to the requirements of the City of San Buenaventura and the County of Ventura National Pollution Discharge Elimination System permit municipal storm water runoff, the conditions of which limit the volume of contaminants allowed to enter the storm drain system, impacts are considered to be less than significant. The project will not have a significant effect on the environment.

We find that the lead agency conducted an adequate environmental review and adopted reasonable mitigation measure to ensure the project will not result in significant environmental impacts. Accordingly, we adopt the lead agency's findings and mitigation requirements for purposes of our approval.

7. Treatment of Revenues

SCE states that all of the revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms, or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the

annual threshold will be split between shareholders and ratepayers on a 70%/30% basis. The proposed lease here is a “passive” product.²

8. Discussion

Section 851 of the Public Utilities Code provides that no public utility “shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the [C]ommission an order authorizing it so to do.” The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is “adverse to the public interest.” (*See, e.g., Universal Marine Corporation* (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility’s operation of the transmission lines. The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation.³ Because the proposed agreement will increase the level of revenues SCE can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

In Resolution ALJ 176-3063, dated June 14, 2001, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily

² See Attachment B to SCE’s Advice Letter 1286-E, which identifies the Secondary Use of Transmission Right of Ways and Land and the Secondary Use of Distribution Right of Ways, Land, Facilities and Substations as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

³ In D.93-04-019, p. 3, we observed: “Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”

determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3063.

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.

2. SCE has property at the Mandalay-Santa Clara 220-kv transmission and 66-kv subtransmission right of way in the City of San Buenaventura available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.

3. Subject to Commission authorization required under Pub. Util. Code § 851, SCE has negotiated a long-term lease proposal for the available property to provide lease revenues with no interference with the operation of the transmission line.

4. The proposed lessee, Ventura Power Storage, is managed by principals with substantial experience in commercial and industrial projects, including self-storage facilities.

5. Ventura Power Storage will finance, construct and maintain a self-storage facility at the site, bearing the costs and making payments to SCE.

6. Revenue in excess of a Commission-established threshold will be shared 70/30 between the utility and ratepayers by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.

7. There has been no opposition to this application.

8. The City of San Buenaventura has granted a Mitigated Negative Declaration for the proposed storage project.

9. Pursuant to CEQA Guideline 15050(b), the Commission has reviewed and considered the information contained in the City of San Buenaventura Mitigated Negative Declaration and Initial Study.

Conclusions of Law

1. No public hearing is necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
3. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated 7.5-acre site to Ventura Power Storage on the terms and conditions set forth in the application.
4. The proposed sharing of revenues with ratepayers conforms to the Commission's order in D.99-09-070.
5. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to enter into a lease of a 7.5-acre site located on a portion of SCE's Mandalay-Santa Clara 220-kilovolt (kV) transmission and 66-kV subtransmission right of way in the City of Ventura to Ventura Power Storage, LLC, under the terms and conditions set forth in this application.

2. As received, all revenues from the lease authorized shall be treated as Other Operating Revenue and shall be subject to the gross revenue sharing mechanism set forth in Decision 99-09-070.

3. SCE shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

4. Application 01-05-049 is closed.

This order is effective today.

Dated March 6, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners